



2009 Legislative Session
House State Administration
January 19, 2009
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HB 109

Testimony before the House State Administration Committee
in Support of House Bill 109
January 19, 2009

House Bill 109 is the Public Employees' Retirement Board's biennial general revisions or "clean-up" bill. The proposed legislation was reviewed and accepted by the State Administration and Veterans' Affairs Interim Committee

Between each legislative session, the Public Employees' Retirement Board and its staff compile legislative changes needed to properly administer its eight retirement systems. We have been asked why there is a bill every year - aren't we ever going to "get it right?" But the retirement field is an ever changing area. We must continually update our statutes to remain consistent with federal law requirements, to address changes required by new technology, and to amend statutes that no longer fit with our changing society.

The table distributed to the Committee at the start of the hearing provides a section-by-section summary of Board's proposed changes. Title 19 of the MCA groups legislation applicable to all Board-administered systems in Chapter 2. Chapters 3, 5, 6, 7, 9, 13, and 17 contain statutes applicable to a single system. For example, Title 19, chapter 3 pertains to, the Public Employees' Retirement System only, while chapter 9 addresses the Municipal Police Officers and chapter 13 pertains solely to the Firefighters Unified Retirement System. If the same change is required in multiple retirement systems, those sections are grouped together and addressed as one.

I will highlight some of the changes the Board believes significant. If you have questions regarding any of the other changes, I will be available for questions.

- **Bill Section 1 - Section 19-2-303(11), MCA.** Retirement benefit options 2 and 3 are based on the life of the member and the life of the member's designated contingent annuitant (or beneficiary). Therefore, if a member picks option 2 or 3, their contingent annuitant must be a natural person. Option 4 is a retirement benefit paid for the member's life or a set period of time, whichever is longer. Since the benefit is based on the member's life only, there is no reason to limit the contingent annuitant to a natural person. The Board believes it reasonable to permit an option 4 contingent annuitant to be identical to the entities than an active member can designate as a beneficiary - a natural person, charitable organization, estate or trust

- **Bill Section 1 - Section 19-2-303(51), MCA.** The Board will be reengineering its database in the next several years. As part of the change, retirement system members will be permitted to access and update personal information, and file for retirement benefits on line. Electronic filing will require that the Board be able to accept electronic signatures.
- **Bill Section 3 - Section 19-2-704, MCA.** The IRS now permits members to purchase service by rolling money from other eligible retirement plans, including IRAs. Adopting these options will make it easier for our members to complete service purchases that will ultimately increase their retirement benefits.
- **Bill Sections 2 and 15 - Sections 19-2-506 and 19-3-1106.** Employers participating in Board-administered retirement systems are strongly urged to report via the web. These proposed amendments update and expand the electronic reporting requirements.
- **Bill Sections 20, 23, 25, 26, 27, 32, and 35.** Each retirement system administered by the Montana Public Employees Retirement Administration (MPERA) provide for disability benefits for members who are not able to continue their employment due to a medical condition, illness or injury. When a member is granted a disability retirement benefit, they may be required to provide current medical information for a periodic review. If the medical examination is insufficient to provide a definite summary of the medical condition, the MPERA may send the member for an independent medical review. Proposed amendments to these sections clarify how the independent medical examination of disabled members is conducted and paid for.
- **Bill Sections 19, 21 and 22 - Sections 19-5-601, -801, and -802, MCA,** are currently written in a confusing, if not incorrect manner. They address disability and death benefits for active and retired judges in the same statute; and fail to distinguish between vested and non-vested members. The proposed legislation clarifies the disability or death benefits for retired members of the JRS members who return to employment for a very short time. Our Judges' Association contact, Honorable Kenneth Neill of Great Falls, has been contacted, understands and agrees with the proposed changes.

The Public Employees' Retirement Board urges your favorable consideration of HB109.

Thank you.

Montana Public Employees' Retirement Board **Table Summarizing HB 109, the Board's General Revisions Legislation**

Bill Section and Current MCA Section	Proposed Change	Reasons and Notes
<p>Bill Section 1</p> <p>MCA Section 19-2-303(11)</p>	<p>Modify definition of contingent annuitant</p>	<p>When a member retires, they may elect a single life annuity benefit that ends when the member dies (option 1); a joint and survivor life annuity that provides either a 100% or a 50% benefit to the member's chosen "contingent annuitant" upon the member's death (options 2 and 3 respectively); or a benefit for the member's life, or a 10 or 20 year period to the contingent annuitant, whichever is longer (option 4).</p> <p>Options 2 and 3 require the contingent annuitant to be a natural person because the retirement benefit is actuarially determined based on the member's and the contingent annuitant's ages at the time the member retires.</p> <p>Option 4 provides a benefit for the member's life and, if the member dies prior to the selected 10 or 20 year period certain, the same benefit is paid to the member's contingent annuitant for the remaining time. This option does not require only one contingent annuitant or that the contingent annuitant be a natural person because the benefit is based solely on the member's age at retirement. Therefore, the Board proposes to permit option 4 contingent annuitants to be identical to the entities that an active member can designate as a beneficiary - natural person, charitable organizations, estates or trusts. Ref 19-2-801</p>
<p>Bill Section 1</p> <p>MCA Section 19-2-303(17)</p>	<p>Amend the general definition of "designated beneficiary" to comply with the specific definition of designated beneficiary found in 19-2-801.</p>	<p>Definitional consistency</p>
<p>Bill Section 1</p> <p>MCA Section 19-2-303(51)</p>	<p>Allow electronic signatures and electronic filing of forms</p>	<p>Current law requires the receipt of a "written instrument" from our members who wish to take action with respect to their retirement rights (for example, change beneficiary or addresses; apply for service purchases or retirement estimates). This requirement prevents members from taking action through the Board's planned interactive web site, and may block the Board's planned development of an imaging system.</p>

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Bill Section 2 MCA Section 19-2-506(3)	Permit the Board's rules to specify the information required to be reported by employers participating in our retirement systems.	Administration of retirement systems requires receipt of information from the employers participating in retirement systems. Over 500 employers report information about their participating employees to one or more of the eight retirement systems administered by the Board. Changing requirements result in the need for additional information. The rule process will permit the Board to address these changes more timely than relying on the biennial legislative session.
Bill Section 3 MCA Section 19-2-704(3) & (4)(a) & (b)	Clarify the types of lump sum payments that can be used to purchase service credit.	Pursuant to federal law, members can pay for service purchases through personal checks, rollovers from eligible retirement plans and payroll deduction.
Bill Sections 3, 4, 5 MCA Sections 19-2-704(6) (f); 19-2-710; 19-2-715(1) (a) and (2) (c)	Clarify service purchase contract requirements and termination of those contracts.	PERS members cannot enter into a service purchase contract unless and until they elect to participate in the defined benefit retirement plan rather than the defined contribution retirement plan. Therefore PERS members who elect to participate in the defined contribution plan will not have a service purchase agreement unless they had been a member of another MPERA-administered retirement system, not PERS Example: a game warden that moves to a position only covered by PERS.
Bill Section 5 MCA Section 19-2-715(2)(a)	Expand the type of service that can be purchased	There is no reason to limit the purchase of service to full-time service. This amendment permits the purchase of part-time service if desired by the member. Service with a school district can be purchased if that service is covered by PERS and not TRS.
Bill Section 6 MCA Section 19-2-801(1)	Address the impact of a second (or third) membership card filed by a member with multiple employers covered by the same retirement system.	An active member's beneficiary is determined by the beneficiary designated on the most recent membership card on file with MPERA. A retirement system member who takes another job covered by the same retirement system as their original job (i.e. a PERS member who fights fires for DNRC on a seasonal basis) must file a second membership card. Members often omit the designated beneficiary because they have another card on file and believe the card on file remains valid. Under current law, only the new card is valid and omission of a beneficiary would result in the member's account going to their estate rather than to their (original) designated beneficiary in the event they died. MPERA is amending the membership card to permit the member to indicate whether a change is beneficiary is required.

Bill Section and Current MCA Section	Proposed Change	Reasons and Notes
Bill Section 7 MCA Section 19-2-908(2)(a)	Replace membership service with employment	"Membership service" is a defined term of art that has no meaning in this context. (periods of service used to determine retirement eligibility). "Employment" is the more accurate term.
Bill Section 8 MCA Section 19-3-201(1)	Make retirement mandatory to all groups of a new contracting public agency	Prevent adverse selection and provide parity of all employees of an employer.
Bill Sections 9, 24 MCA Sections 19-3-316(4)(b) 19-7-404	Update employer contribution rate based on "trigger" adopted in 2007	The .135% rate in PERS and the .29% rate in SRS expire July 1, 2009. An amendment will also be required to coordinate this language with HB 142, eliminating the trigger. Codify with Governor's bill
Bill Section 10 MCA Section 19-3-403(4) & (7)	Makes clear for school districts that their substitute teachers and teacher aides are not eligible for PERS service.	Substitute teachers and teacher aides are eligible to join TRS, not PERS. School districts confuse these aides with playground aides. Addition of this subsection will educate school districts and provide documentation of their status.
Bill Section 11 MCA Section 19-3-504(5)	Clarify when end of an absence occurs	Compliance with a District Court decision. The "reason for absence" as that term is used in this statute, includes the termination of employment.
Bill Section 12 MCA Section 19-3-513(3) & (4)	Clarifies how 1 for 5 service is used in early retirement calculations	1 for 5 service is used in computing early retirement benefits – Ensure application of 19-3-906(3) in computing early retirement
Bill Section 13 MCA Section 19-3-906(3)	Clarify the computation of an early retirement benefit	1 for 5 service can be purchased to reduce the early retirement benefit factor- after 25 years of membership service.
Bill Section 14 MCA Section 19-3-1015(1)	Add "at Board's expense"	Other retirement systems administered by the Board require the Board to pay for these medical conditions. No reason to not have same requirement for PERS members. Very limited number of examinations are required.

Bill Section and Current MCA Section	Proposed Change	Reasons and Notes
Bill Section 15 MCA Section 19-3-1106(3)	Modify working retirees certification requirement	Accept electronic reporting from ERs.
Bill Section 16 MCA Section 19-3-1210	Add "if there is no surviving designated beneficiary" after "estate"	Clarify that the member's estate will receive payment only if no designated beneficiaries survive the member.
Bill Section 17 MCA Section 19-3-2111 (1) & (7)	Eliminate references to the initial election window during which PERS members had one year to elect to continue to participate in the defined benefit retirement plan or move to the defined contribution retirement plan.	The initial window (July 2002 through June 2003) has expired. Now, only new PERS members have the election.
Bill Section 18 MCA Section 19-3-2133	Clarify that EIAC is not subject to 2-15-122, MCA, which requires governor approval of an advisory council.	The 1999 Legislature required the PERB to create EIAC. The Governor appoints the Board, which then appoints EIAC members.
Bill Section 19 MCA Section 19-5-601	Clarify amount of a judge's disability benefit.	Current language is confusing. The "contingent annuitant" does not receive a benefit unless and until the member dies. This statute addresses disability, not death. The proposed change does not alter the amount of the benefit, only the type of benefit at issue.

Bill Section and Current MCA Section	Proposed Change	Reasons and Notes
Bill Sections 20, 23, 25, 26, 27, 32, 35 MCA Sections 19-5-612 19-6-612 19-7-612 19-8-712 19-9-904 19-13-804 19-17-408	Add "...physician or surgeon <u>approved by the board...</u> " Delete "at recipient's place of residence"	The Board has the right to request a disabled member to undergo a medical examination to confirm continued disability, at Board expense. Since the Board is requesting and paying for the examination, the examination should be conducted by a Board-approved physician. Very few, if any doctors, make house calls.
Bill Section 21 MCA Section 19-5-801	Clarify the payment for death of JRS members	Current language combines and confuses the death payments for judges who die while active and judges who die after retirement. New language addresses the death of an active judge; 19-5-701 already addresses the death of a retired judge.
Bill Section 22 MCA Section 19-5-802	Clarify that this section applies to vested members only.	Current language in these statutes applies to vested members only. The death of a non- vested member is addressed in 19-5-301.
Bill Section 28 MCA Section 19-9-1101	Change membership service to service credit.	The formula for determining a police officer's retirement benefit includes the officer's years of service credit. Membership credit is used to determine eligibility to retire.
Bill Section 29 MCA Section 19-13-104(4)	Expand definition of "employer" to include all cities and a rural fire district. – first and second class cities	Section 19-13-210 was amended in 2007 to permit all cities (not just cities of the first and second class) and rural fire districts to participate in the Firefighters Unified Retirement System. The definition of employer should have been amended at that time to include those entities.
Bill Section 29 MCA Section 19-13-104(6)	Include reference to specific statutes that impose the age 35 requirement on members of FURS	The age 35 requirement is in 7-33-4107, which is referenced in 7-33-4106. Including 7-33-4107 clearly supports the age requirement that has been recognized in attorney general opinions and case law.

Bill Section and Current MCA Section	Proposed Change	Reasons and Notes
Bill Section 29 MCA Section 19-13-104 (9)	Clarification of definition of part paid firefighter.	The firefighter definition is provided in 7-33-4106 and 4107.
Bill Section 30 MCA Section 19-13-704(2)(b)(ii)	Clarification of correct term	The terms "service" and "service credit" are defined. Service credit is the proper term in this instance as it is the term used to calculate the retirement benefit.
Bill Section 31 MCA Section 19-13-803(1)(b)	Clarify that the minimum disability retirement benefit for a firefighter, whether full or part-paid, is one-half the member's highest average compensation.	Part-time firefighters have substantially less service credit than membership service. Part-time firefighters with more than 20 years of membership service but less than 20 years of service credit would, under current language, receive a smaller disability benefit than a firefighter with less than 20 years of membership service.
Bill Section 33 MCA Section 19-17-107(2)	Change frequency of VFCA actuarial valuation	Annual rather than biennial valuations should be required for the VFCA as annual valuations are required in other MPERA administered retirement systems.
Bill Section 34 MCA Section 19-17-401(5)(a) & (b)	Clarify when a VFCA retiree can return to service with out losing benefits.	Prior to 2007, VFCA retirees could only return to service under specific circumstances. 2007 amendments permitted their return at any time, but did not repeal the "specific circumstances" portion of the statute. The proposed amendment eliminates this inconsistency, while still permitting retired VFCA members to return to service and permitting the fire chief to determine what the duties they can perform. The member's retirement benefit remains unaffected by this return to service.
Bill Section 35 MCA Section 19-17-408	Eliminate "at the member's residence"	Clarify medical examinations do not have to be at the member's residence. Consistent with actual practice.
Bill Section 36 MCA Section 19-17-504(1)	Clarify submission date for bills	Claims must be made with in one year of injury date. Administrative feasibility.